

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

TIMOTHY M. PITTS,

Petitioner,

v.

Civil No. 05-60233

Criminal No. 03-80694

UNITED STATES OF AMERICA,

Hon. John Corbett O'Meara

Respondent.

**ORDER DENYING PETITIONER'S MOTION FOR GOOD FAITH
CONSIDERATION FOR MODIFICATION OF SENTENCE UNDER § 2255**

Before the court is Petitioner's Motion for Good Faith Consideration for Modification of Sentence under § 2255, filed October 3, 2005. The government submitted a response on November 23, 2005.¹ After a careful review of the record, the court is satisfied that an evidentiary hearing is unnecessary. For the reasons set forth below, Petitioner's motion is denied.

Petitioner suggests that in light of Blakely v. Washington, 124 S.Ct. 2431 (2004) and U.S. v. Booker, 125 S.Ct. 738 (2005), the court should modify his sentence, although he does not specifically attack any aspect of it. Petitioner also contends that the court intended to revisit his sentence after the Supreme Court's decision in Booker. Although the court recognized that Booker was pending at the time of Petitioner's sentence, the court also noted that "I certainly am

¹ The court ordered the government to submit a response by November 30, 2005. Petitioner apparently did not receive the government's timely response and filed a Motion for Order for Default Judgment on December 9, 2005. Petitioner's motion for default judgment is not well taken and is denied.

aware of and am paying attention to the sentencing guidelines when I arrive at this sentence, but I also would have arrived at it independently. Were there no guidelines, I would be in the same place.” Sentencing Hearing TR (8/25/2004) at 11.

Further, neither Blakely nor Booker apply retroactively to provide relief for petitioners submitting motions pursuant to § 2255. See, e.g., Humphress v. United States, 398 F.3d 855 (6th Cir.), cert. denied, 126 S.Ct. 199 (2005) (holding Booker does not apply retroactively); McReynolds v. U.S., 397 F.3d 479 (7th Cir.), cert. denied, 125 S.Ct. 2559 (2005) (same); In re Dean, 375 F.3d 1287 (11th Cir. 2004) (holding Blakely does not apply retroactively).

Accordingly, IT IS HEREBY ORDERED that Petitioner’s October 3, 2005 Motion for Good Faith Consideration for Modification of Sentence under § 2255 is DENIED.

IT IS FURTHER ORDERED that Petitioner’s December 9, 2005 Motion for Order of Default Judgment is DENIED.

s/John Corbett O’Meara

John Corbett O’Meara
United States District Judge

Dated: January 11, 2006